

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-mg  
. Chapter 11  
.   
MOTORS LIQUIDATION COMPANY, . (Jointly administered)  
et al., f/k/a GENERAL .  
MOTORS CORP., et al, . One Bowling Green  
. New York, NY 10004  
Debtors. .  
. Thursday, December 20, 2018  
. 2:00 p.m.  
. . . . .

TRANSCRIPT OF CASE MANAGEMENT CONFERENCE  
**BEFORE THE HONORABLE MARTIN GLENN**  
**UNITED STATES BANKRUPTCY COURT JUDGE**

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1 (Proceedings commenced at 2:00 p.m.)

2 THE COURT: Please be seated. We're here in Motors  
3 Liquidation Company, 09-50026. I have the list of appearances  
4 in front of me.

5 Mr. Weisfelner, do you want to start?

6 MR. WEISFELNER: Yes, Your Honor. Thank you. First  
7 of all, on behalf of all of the combatants, I want to thank  
8 Your Honor for the flexibility that you've shown in  
9 rescheduling this conference. My colleagues have asked me to  
10 avoid saying things like "here we go again" or "the third  
11 time's the charm," but frankly I couldn't help myself.

12 I want to divide my comments into two parts.

13 THE COURT: That's a comment that's been made by a  
14 lot of people about you, Mr. Weisfelner, but --

15 MR. WEISFELNER: That I couldn't help myself.

16 THE COURT: Right.

17 MR. WEISFELNER: I accept it.

18 I want to divide my comments in two parts, starting  
19 with the question of timing. And in particular, so as to avoid  
20 Your Honor having to ask the question, I want to deal with why  
21 is it taking us so long, and then what do we see as to the  
22 timing generally going forward.

23 As we spelled out in our December 12th letter, "we"  
24 meaning the plaintiffs, the GUC Trust, and the Unitholders, are  
25 all working very hard on a revised proposed settlement



1 consistent with Your Honor's September 25th decision. The  
2 parties are very cautious that, charging up the hill for the  
3 third time, this time we need to get it right.

4 And just to give Your Honor a sense of what the delay  
5 has been, first and foremost, we had to get a thorough handle  
6 on the path forward, as was outlined in Your Honor's September  
7 25th opinion, understanding through all of the various class  
8 action gurus employed by each of our respective firms what the  
9 rulings in Manville and the subsequent Ortiz decision means for  
10 our path forward and ultimately what the support was for a  
11 limited-fund, non-opt-out class or classes.

12 To complicate matters, as I'm sure Your Honor is  
13 aware, there are brand new amendments to Rule 23.

14 THE COURT: I referenced them in the opinion.

15 MR. WEISFELNER: And in particular, amendment to Rule  
16 23(e) (2) (B), which requires that the first step is to seek a  
17 finding from this Court, that this Court will likely be able to  
18 approve the settlement and our settlement purposes class  
19 certification.

20 Which brings us to the next issue, which is notice  
21 and notice costs. And, Your Honor, to fully appreciate that,  
22 there are two potential universes of class members. In  
23 universe one, we are looking at all Old GM registration holders  
24 up to the bar date. Our best estimate is that's over  
25 26 million registrants. Not cars, because the cars may have

1 been owned or leased by multiple parties, but 26 million  
2 registrants. And the cost of updating those registrations and  
3 getting enough information to be able to do mail notices and  
4 subsequent email notices or just the mail notices, our best  
5 estimate is \$13 million.

6           Conversely, there's an alternative universe, and that  
7 is one where you would take out or subtract anyone who sold  
8 their car before the bar date on the theory that you, by  
9 definition, therefore sold the car before the recall notices.  
10 That's a universe that shrinks down to some 12 million  
11 registrants, and the cost of updating all those registrations  
12 from the original loan or through as many successive purchasers  
13 up until the person who owned the car as of the bar date is  
14 estimated at some \$7 million.

15           And again, Your Honor, that's just the cost of  
16 updating the registrations. There's additional cost for  
17 mailing, additional cost for establishing and maintaining a  
18 website.

19           The other factor is the timing of updating the  
20 registration materials. For most states, we are told by the  
21 vendor involved that it's a four-to-six-week process. There  
22 are, however, a handful of states where you can add yet another  
23 six weeks to the time frame because there are a lot more hoops  
24 to jump through in those jurisdictions in order to obtain  
25 updated registrations.



1           The other thing that impacts all of us in terms of  
2 timing is, as I'm sure Your Honor is aware or will become  
3 aware, Judge Furman has in front of him certain summary  
4 judgment decisions that are currently pending that will impact  
5 the size of the two universes. And without getting into the  
6 complexity, it's not just a binary call, but we expect that  
7 Judge Furman's summary judgment ruling could very well  
8 implicate whether we're talking about 26 million registrations  
9 or 11- or 12 million registrations; a cost would be the  
10 13 million or 7 million.

11           We expect that ruling fairly soon. And by fairly  
12 soon, I can't give you a definitive date. The judge did have  
13 on his agenda bellwether trials, which are now off of his  
14 plate, if you will, because of a settlement. And at least the  
15 lead plaintiffs believe and hope that the summary judgment  
16 ruling will now take its place in terms of order of priority.

17           THE COURT: Has he heard argument on this summary  
18 judgment?

19           MR. WEISFELNER: Your Honor, I don't know. I think  
20 it's fully submitted, but no oral argument. And I'm not sure  
21 that he's going to request oral argument. But in any event,  
22 but for any argument he may seek, the matter is fully briefed  
23 by all the parties.

24           So discretion being the better part of valor, it  
25 seems to us that the determination of what notice to proceed



1 with, because of the significant difference in cost, might very  
2 well wait for an ultimate ruling by Judge Furman on the pending  
3 summary judgment motions. That's not to say that an awful lot  
4 of work can't and shouldn't be done in the interim.

5 THE COURT: How do you anticipate proposed class  
6 definitions here to differ from the class definitions in the  
7 district court?

8 MR. WEISFELNER: They will differ significantly for a  
9 whole host of reasons, not the least of which is the two  
10 classes don't overlap. There is a much different plaintiff  
11 class in front of Judge Furman in his MDL. By definition, our  
12 class are holders as of the bar date, and whether they include  
13 prior owners of the same vehicles or prior lessees of the same  
14 vehicles is the issue that, among others, is up for  
15 determination by Judge Furman.

16 Just Furman, conversely, is looking at owners of the  
17 cars post-sale, except for the issue of I guess successor  
18 liability, which applies to presale owners as well. But  
19 they're two different classes. Not only that, but Judge Furman  
20 is working towards certification of a class for trial purposes,  
21 which, as Your Honor knows, is a lot different a standard than  
22 certification for settlement purpose.

23 Your Honor, going back to the notice and the cost of  
24 notice, some of us on the plaintiff, GUC, beneficial holder's  
25 side believe that in a settlement context, the defendant picks



1 up the cost of notice, the defendant in this case being the GUC  
2 Trust. Some of us have expressed the view that the cost of  
3 notice should be shared, and still other of us believe that GM,  
4 both contractually and as a matter of equity, ought to be,  
5 pardon me, picking up some or all of the notice costs. After  
6 all, as I'm reminded, we wouldn't be here today but for the  
7 fact that GM did not give notice of the barred date to people  
8 that were impacted by these defective vehicles.

9 In any event, as Your Honor may recall from prior  
10 iterations of our settlement agreement, it was originally  
11 contemplated that the GUC Trust would "front," for lack of a  
12 better word, \$6 million worth of notice costs, plus \$15 million  
13 worth of a settlement payment, for a grand total of 21 million.  
14 But remember that the GUC Trust was only going out of pocket  
15 and taking a risk as to the notice costs before Your Honor were  
16 -- would have been in a position to approve the settlement.

17 Now we may have to go back to the GUC Trust and ask  
18 them to put a lot more money on the line before there is a  
19 final determination of the merits of the settlement and the  
20 certification of the class for settlement purpose.

21 That's why, Your Honor, we think we'll be done with  
22 all the paperwork and done with the outstanding issues that  
23 need to be resolved, and I think we're very close to a final  
24 resolution, and we need until the end of January to get  
25 started.





1 THE COURT: I think you're right. It said January  
2 3rd. I think you've now pushed that further.

3 MR. WEISFELNER: Yeah. I'm not sure the letter ever  
4 said the 3rd. I think the letter clearly said the end of -- I  
5 think it said 31, actually.

6 THE COURT: Okay. I misremember then. Go ahead.

7 MR. WEISFELNER: So here's the process as we envision  
8 it and when we think we get on file. By the end of January, if  
9 not sooner, we will embark on what we refer to as "stage one."  
10 In stage one, we will be asking the Court to approve our form  
11 of notice, which will be state-of-the-art notice under Rule  
12 23(e)(1); in other words, direct-mail notice. And there will  
13 be one of two universes of people who are going to get the  
14 notice, depending on what Judge Furman ultimately rules.

15 We'll ask Your Honor, in stage one, to make a  
16 determination that you are likely to approve the settlement  
17 under both Rule 9019 and Rule 7023. And once that's  
18 accomplished, and we have all the information we need to  
19 conduct the notice, the notice will begin.

20 Now, it will take us, as I indicated before, a period  
21 of time to collect the registration data from the vendor and to  
22 do the notice itself. So it may very well be that if we're in  
23 and out of court in the month of January, early February, we're  
24 not back in court probably until May seeking final approval of  
25 both the settlement and the certification.



1           Stage three is the estimation proceeding itself. And  
2 it seems to me that between now and May when we ask the Court  
3 for final approval of the settlement and certification for  
4 settlement purposes, we can get a lot of work done in terms of  
5 ginning up the estimation proceeding. Although I do recall  
6 Your Honor saying that if Your Honor were to approve the  
7 settlement, you intended to direct the parties to mediation  
8 before moving to estimation. And if that's still Your  
9 Honor's --

10           THE COURT: It was so long ago that I said that,  
11 Mr. Weisfelner, that I don't even remember it.

12           MR. WEISFELNER: Okay. But one way or the other, we  
13 should be ready with estimation motion and hopefully some  
14 semblance of agreement with GM on the procedure for estimation.

15           I should stop here and divert a bit to let you know  
16 that consistent with Your Honor's order establishing today's  
17 status conference, we did reach out to New GM and we did have a  
18 meet and confer, at which time we asked New GM what its views  
19 were with regard to discovery. We asked New GM what its views  
20 were with regard to motions to withdraw the reference. We  
21 asked New GM what its views were with regard to continuing or  
22 revising its motion to stay proceedings.

23           And in fairness to New GM, their response should have  
24 been anticipated, and it was, can't really tell you until we  
25 see your pleadings. So we will be pressing them yet again,



1 sometime after we file our stage-one pleadings, for their view  
2 on those three topics: discovery, which we think there ought  
3 not be any until we get the estimation; withdraw the reference;  
4 continue motion to stay.

5           The fourth and final stage, once the estimation is  
6 completed, and assuming that there is any trigger of the  
7 accordion feature, would be for the plaintiff's side, working  
8 together with a mediator or judicial monitor, to come up with  
9 what I refer to as "trust distribution procedures," and to  
10 present all of that to the Court on notice to affected parties.

11           There is a possibility, at that stage, that the class  
12 could be decertified, re-jiggered, you know, if any party in  
13 interest felt that their interests weren't being adequately  
14 protected in terms of the allocation methodology that the  
15 parties ultimately put forward that Your Honor will be asked to  
16 approve.

17           THE COURT: Come back to stage one.

18           MR. WEISFELNER: Yes, sir.

19           THE COURT: Do you contemplate one or more classes or  
20 subclasses?

21           MR. WEISFELNER: We contemplate one or more. And not  
22 to be cute about it, the current contemplation is that there  
23 will be a class consisting of people who owned or leased the  
24 initial defect cars. I'm forgetting my recall numbers, but I  
25 think it was 047. And the other class will be all of those



1 owners or lessees of the non-initial-ignition-switch cars. So  
2 those are the two classes that we currently contemplate.

3 THE COURT: So Judge Furman's various decisions  
4 identify differences in the law of various states. And does  
5 that compel subclasses?

6 MR. WEISFELNER: It does not, Your Honor, and let me  
7 tell you why.

8 THE COURT: Go ahead.

9 MR. WEISFELNER: We contemplate that all of Judge  
10 Furman's rulings with regard to underlying merits -- and Your  
11 Honor may recall that one of the ones that we all seem to point  
12 to, first and foremost, is manifestation versus  
13 non-manifestation. And as Judge Furman has previously  
14 indicated, there are some states where you can't make out a  
15 claim for economic loss on a theory of "benefit of the bargain"  
16 unless your vehicle demonstrated or manifested a defect.

17 And, Your Honor, when it comes to the estimation  
18 procedure, that ruling and every other ruling that may impact  
19 the damages calculation on an overall basis to determine how  
20 much of any of the accordion gets triggered is something that  
21 the plaintiffs will have the burden of culling, for fear that  
22 New GM will hand our heads to us if we were to attempt to  
23 demonstrate damages that in any way conflict with any of the  
24 merits rulings that we've gotten from Judge Furman to date.  
25 But they will not require separate classifications or



1 certification at the settlement phase.

2           It is possible that once the accordion is triggered,  
3 based on the evidence that we intend to proceed with, in full  
4 contemplation of Judge Furman's prior rulings, that that may  
5 affect people's entitlement to all or any portion of the  
6 accordion when it comes time to allocation. And it's possible  
7 at that stage of the proceeding, depending on parties' views,  
8 that we may very well have to -- and I don't know the exact  
9 methodology -- decertify the original settlement class,  
10 re-certify subclasses to take into account people's different  
11 expectation levels. It gets a little complicated, because even  
12 in those states that require manifestation, there may very well  
13 be people whose cars manifested the defect. And, Your Honor, I  
14 would think all of that needs to be accounted for in the class  
15 context, albeit at the allocation stage and not before that.  
16 I'd be surprised if GM didn't have a different perspective, but  
17 we'll deal with it when they raise it, as I'm sure they will.

18           THE COURT: Obviously, motions to withdraw the  
19 reference are decided by the district court, not by this Court.  
20 But what is your view -- you recognize that Judge Furman is  
21 going to be deciding a fairly large number of issues that  
22 impact on class certification. He's already decided many, I'll  
23 refer to them as "merits issues," that deal with economic loss.  
24 Why shouldn't the reference be withdrawn and Judge Furman  
25 decide all of the class issues?



1 MR. WEISFELNER: For the same exact reason that the  
2 last time GM sought to withdraw the reference from the  
3 bankruptcy court, the district court denied the withdraw. And  
4 those are breaking them down to their two respective groupings.  
5 The only summary judgment issue that could at all impact  
6 proceedings before this Court is the one that speaks to the  
7 size of the universe.

8 As to the merits decisions that he's made, and is not  
9 likely to make any more before we get to estimation, but if he  
10 were, all of those merits determinations will be -- will impact  
11 our trial preparation. So there's not a decision that Judge  
12 Furman has made that won't be reflected in how we try the  
13 estimation case.

14 THE COURT: From your letter, I take it you agree  
15 that to the extent proceedings continue in this Court, and  
16 Judge Furman has issued decisions and may issue additional  
17 decisions that I'll refer to as "merits," those would -- you  
18 would agree those would apply in further proceedings here?

19 MR. WEISFELNER: Absolutely. Either in connection  
20 with -- as we plotted out, his near-term decisions are likely  
21 to involve summary judgment on the pending papers, which could  
22 dramatically impact the size of the universe, therefore who  
23 gets noticed, therefore the cost of notice. It makes sense to  
24 most of us that we ought to be awaiting that determination  
25 before we blow X number of millions of dollars on costs of



1 notice for people that Judge Furman has decided are entitled to  
2 notice. There are some countervailing concerns among some of  
3 the folks within the beneficiary and GUC class about just how  
4 ironclad a series of protections they want, but I think it'll  
5 resolve itself that way.

6 Any merits-based issues that the judge has previously  
7 made or will make in the future will be reflected by necessity  
8 as part of the estimation proceedings. Your Honor is not  
9 likely to put in the column of adding up to hopefully  
10 \$10 billion, any dollar amount that reflects damages that Judge  
11 Furman has already said, sorry, doesn't fly. So we will be  
12 careful, and GM will hold us to our promise to be careful not  
13 to try anything that's already been determined. And in that  
14 fashion, I think all of Judge Furman's past and future  
15 determinations will be reflected in all of the proceedings that  
16 Your Honor will be asked to engage in.

17 THE COURT: New GM's letter, which is ECF 14384, very  
18 briefly addressed, because I requested it be addressed, the  
19 issue of mediation. And my takeaway from that portion of the  
20 letter is that they've been reasonably successful in resolving  
21 personal injury/wrongful death -- presale personal  
22 injury/wrongful death cases. How, if at all, does that affect  
23 the -- your achieving the threshold to trigger the accordion?

24 MR. WEISFELNER: Your Honor, our co-leads, together  
25 with all of our experts, have assured me that we easily get to



1 the \$10 billion threshold if you were to assume zero value for  
2 personal injury/wrongful death.

3 Now, having said that, I read the letter. I've been  
4 reading submissions to Judge Furman. I know approximately how  
5 many personal injury/wrongful death plaintiffs actually signed  
6 on to the last version of the settlement agreement. I'm led to  
7 believe that not very many of them have settled, so we still  
8 have the same grouping off personal injury/wrongful death.

9 I think it's great that other personal  
10 injury/wrongful death claimants against New GM, primarily folks  
11 that had their injury or loss after the sale date, you know,  
12 are being resolved. But I don't think it's going to have a  
13 dramatic impact on us, A, because I think we hit the threshold  
14 without personal injury/wrongful death. But I believe that  
15 we'll still have lots of company when it comes to the  
16 estimation trial.

17 THE COURT: Since you're up here, I'll ask you this  
18 now. Mr. Peller, I see, is on the phone list, that he's  
19 appearing by telephone. His letter, which is at ECF 14382,  
20 expresses his view that some or all of his clients should be  
21 able to participate and agreed that they want to participate in  
22 the settlement. They certainly left that open. Do you want to  
23 address the issues raised by Mr. Peller's letter?

24 MR. WEISFELNER: Sure. As I view it, Mr. Peller  
25 really has two concerns. One is to the extent that he has





1 clients that have accident claims relating to Delta ignition  
2 switch related cars. He'll be given the same opportunity as  
3 the people represented by Mr. Weintraub and his cohorts to sign  
4 onto the settlement agreement, or alternatively to file  
5 whatever objections he thinks are necessary. But it's our  
6 intent to include his clients as part of the settlement.  
7 That's sort of up to him.

8 He was invited to our meet and confer. He will be  
9 shown the settlement agreement in advance. We will walk him  
10 through any questions, concerns, or comments that he may have.

11 But in addition --

12 THE COURT: What about the other recalls?

13 MR. WEISFELNER: Mr. Peller has a client or clients  
14 that are claiming damages on account of different  
15 non-ignition-switch related claims. I guess that's Mr. and  
16 Mrs. Elliott. And this is a -- an injury or a claimed defect  
17 that's outside the scope of the MDL or what it is that the co  
18 leads have been doing. But I understand that the GUC Trust has  
19 been coordinating with Mr. Peller.

20 THE COURT: I'm going to ask Ms. Going about what the  
21 GUC Trust

22 MR. WEISFELNER: But she's really in a much better  
23 position to address it than I am.

24 THE COURT: Okay. That's fine. All right. Anything  
25 else you want to add at this point?



1 MR. WEISFELNER: No, Your Honor.

2 THE COURT: Let me hear from Ms. Going, then.

3 MR. WEISFELNER: Thank you.

4 MS. GOING: Good afternoon, Your Honor. Kristin  
5 Going, Drinker Biddle Reath, on behalf of Wilmington Trust as  
6 the GUC Trust administrator.

7 So why don't I just start right where Mr. Weisfelner  
8 let off. So with regard to the Elliotts and the 2006  
9 Trailblazer, which I believe they are alleging a door handle  
10 defect, Mr. Peller did file a joinder to the motion to file a  
11 late claim on behalf of the Elliotts and their Trailblazer.  
12 But as we've discussed with Mr. Peller, that the Trailblazer  
13 and this door handle defect, I'm not even sure if the recall  
14 for this door handle was actually issued prior to the bar date  
15 or after the bar date.

16 This is completely separate and apart from the  
17 ignition switch, both defined term and undefined term "ignition  
18 switch defects." And so we view this as no different than,  
19 say, the Gillespie matter that was before you previously on a  
20 motion to file a late claim. And so we're prepared to proceed  
21 on adjudicating the motion to file a late claim.

22 But procedurally here, all we have is Mr. Peller  
23 joining the late-claimed motion that was filed by the economic  
24 loss plaintiffs, and it attached, you know, their proof of  
25 claim that was for ignition switch defects. So we've asked



1 Mr. Peller to actually file something on behalf of the Elliotts  
2 specifically addressing the Trailblazer and the door handle and  
3 their allegations for why they would be entitled to file a late  
4 claim. And he has agreed to do that, and then we would  
5 respond.

6 THE COURT: Okay. Anything else you want to add at  
7 this point? A lot of what Mr. Weisfelner said really directly  
8 impacts on the GUC Trust, so --

9 MS. GOING: It does. And it's -- what he said is  
10 consistent. There are a lot of discussions that are continuing  
11 regarding settlement, so I'm not going to get into those here.

12 THE COURT: Does your crystal ball suggest that you  
13 are going to successfully reach and agreement that will be  
14 reflected in a new settlement agreement and motion for class  
15 certification?

16 MS. GOING: That is certainly our hope and intent  
17 right now, and that's what we're working towards.

18 THE COURT: Okay.

19 MS. GOING: I guess the only -- while I'm here, I do  
20 have one other issue that is related to the settlement, and it  
21 involves, which you mentioned, the letter from New GM and their  
22 description of the settlements that they've entered into with  
23 some personal injury presale plaintiffs. So the GUC Trust's  
24 intent in the revised settlement -- it was the same in the  
25 former versions of the settlement -- would be to settle with



1 any and all presale personal injury plaintiffs that are willing  
2 to settle with us and come forward. I think this letter, and  
3 the description of the settlements that they reached, we found  
4 to be very positive.

5 But at the same time, we'd like -- we need some  
6 assistance, hopefully from New GM, on getting a better handle  
7 of the universe of plaintiffs that they are settling with. And  
8 I really view this as a -- simply, you know, an Excel  
9 spreadsheet game.

10 THE COURT: May I ask you this? Have you talked to  
11 Mr. Steinberg or Mr. Best about what it is you want?

12 MS. GOING: We have reached out to them this week,  
13 and we're going to continue to engage with them. Just because  
14 these are individuals, so we should easily be able to, you  
15 know, keep track of who's settled and who is in and out of the  
16 settlement.

17 THE COURT: Okay.

18 MS. GOING: And before I cede the podium, I just want  
19 to make sure that the schedule that we've proposed vis-à-vis  
20 Mr. Peller's client on the Trailblazer is acceptable to Your  
21 Honor.

22 THE COURT: Well, tell me what the schedule is. I  
23 mean, you -- I don't think you put dates on it. You indicated  
24 -- well, tell me what you -- have you agreed on a schedule with  
25 Mr. Peller? I'm going to hear from Mr. Peller in a few



1 minutes, so --

2 MS. GOING: Yes, I believe we have.

3 THE COURT: Okay. And what are you -- what's the  
4 schedule?

5 MS. GOING: That Mr. Peller has committed to filing  
6 his late claim by the end of January and --

7 (Counsel confer)

8 MS. GOING: He will file it by January 21st and we  
9 will file a response by February 11th.

10 THE COURT: Okay. Perfect.

11 MS. GOING: And the last matter I just want to raise  
12 with Your Honor, and I think Mr. Weisfelner alluded to it, I  
13 think during this time period that we have between now and a  
14 settlement getting on file, we anticipate reaching out to New  
15 GM on the issue of obtaining from them the names and addresses  
16 of the individuals that they sent the recall notices to in  
17 2014. We believe that pursuant to the master sale purchase  
18 agreement, that they do have an obligation to provide us with  
19 access to books and records, and we're not looking -- we're  
20 just looking for literally the names and addresses of everyone  
21 that they sent recall notices to for our ignition switch  
22 defined term and undefined term recalls.

23 THE COURT: And have you already made that request,  
24 or are they hearing it for the first time as you're --

25 MS. GOING: They're --



1 THE COURT: -- standing there?

2 MS. GOING: Well, they've heard rumblings of it, but  
3 we will be sending them a letter this week.

4 THE COURT: Okay. All right. Yeah, then I won't  
5 even ask them what their response is.

6 MS. GOING: Okay.

7 THE COURT: When they get your letter, they'll  
8 respond.

9 MS. GOING: Absolutely.

10 THE COURT: Okay. Anything else you want to --

11 MS. GOING: That's all, Your Honor.

12 MR. WEISFELNER: Your Honor, in fairness --

13 THE COURT: Mr. Weisfelner?

14 MR. WEISFELNER: -- months ago we went to GM to talk  
15 about what information they had available with regard to  
16 identification of vehicle owners. Your Honor may recall that  
17 under certain federal regulations, vehicle manufacturers are  
18 required to maintain records as to who they sold the car to.  
19 Furthermore, one would anticipate that GM had records of who  
20 they sent the recall notices to. Somewhere in between those  
21 two universes is what we're looking for, and that's the owners  
22 of lessees of the cars as of the bar date.

23 We got a lot of different information from New GM,  
24 some of which made sense, a lot of which didn't. There appears  
25 to be a vendor that everyone in the country uses to get this



1 information.

2 THE COURT: I think you told me quite some time ago  
3 it was very expensive to get it from them.

4 MR. WEISFELNER: Very expensive. And furthermore,  
5 we're told that the information they got is pursuant to a  
6 license agreement with GM, and that this vendor won't give us  
7 the information because we're not their licensed parties. And  
8 not to make things too difficult, but I didn't want Your Honor  
9 to be left with the impression that we haven't spoken to GM  
10 about this topic --

11 THE COURT: You had --

12 MR. WEISFELNER: -- in the past.

13 THE COURT: I do remember from prior hearings that  
14 this issue came up. You raised it about the vendor and what  
15 the potential cost was. Today is not the time to really get  
16 into that issue, so neither side really needs to argue this  
17 issue. I understand it's going -- it may well be an issue.  
18 We'll first take it up if you -- if you haven't, you will with  
19 New GM's counsel, and at an appropriate time, if I have to deal  
20 with it, I'll deal with it. Okay?

21 MS. GOING: Thank you, Your Honor.

22 THE COURT: Thank you.

23 Mr. Weintraub, do you want me to hear --

24 MR. WEINTRAUB: Yes, Your Honor.

25 THE COURT: Your beard's getting longer.



1 MR. WEINTRAUB: Yes, Your Honor. My wife keeps  
2 reminding me of that every morning.

3 Your Honor, there's been some --

4 THE COURT: And grayer, but, you know.

5 MR. WEINTRAUB: And grayer. I can't help that, Your  
6 Honor, it's this case.

7 MR. WEISFELNER: He was clean shaven when we first  
8 filed the motions.

9 MR. WEINTRAUB: That's true. William Weintraub,  
10 Goodwin Proctor, for the Hilliard/Henry docket of pre-closing  
11 action and plaintiffs.

12 Your Honor, there's been some discussion about  
13 mediation and settlement, so in case Your Honor was wondering,  
14 there was a mediation session between -- my clients, Mr. Henry  
15 and Mr. Hilliard, met with New GM this week, and the matter did  
16 not settle.

17 THE COURT: Do you anticipate additional mediation  
18 sessions or is the matter -- or is it an impasse and no further  
19 sessions are going to --

20 MR. WEINTRAUB: I don't really know how to answer  
21 that, Your Honor.

22 THE COURT: Then don't.

23 MR. WEINTRAUB: I was told --

24 THE COURT: Yeah, I don't want to get into --

25 MR. WEINTRAUB: -- discussions terminated, but I





1 don't think anything is every really over --

2 THE COURT: Nothing's --

3 MR. WEINTRAUB: -- if people want to resume.

4 THE COURT: It's not over until it's over.

5 MR. WEINTRAUB: Exactly, Your Honor.

6 THE COURT: Okay.

7 MR. WEINTRAUB: Thank you.

8 THE COURT: All right.

9 Mr. Peller, do you want to be heard?

10 MR. PELLER: I don't have anything to add, Your  
11 Honor.

12 THE COURT: Do you agree with Ms. Goings with respect  
13 to the schedule by when you'll file your papers and that the  
14 GUC Trust will respond, I think she said you were -- your  
15 date --

16 MR. PELLER: Yes, Your Honor.

17 THE COURT: -- is January 21?

18 MR. PELLER: The only issue that may pose --

19 THE COURT: Just let me finish.

20 MR. PELLER: The only issue that may pose a future  
21 scheduling issue is whether there needs to be discovery with  
22 respect to Old GM's knowledge of the Elliotts' non-ignition  
23 switch door module defect. But my understanding is by the 21st  
24 we'll file a proposed late proof of claim and that that issue  
25 can be addressed later.



1 THE COURT: Okay. Thank you. All right.

2 Mr. Steinberg or Mr. Basta, whoever is going to  
3 address on behalf of New GM. Mr. Basta?

4 MR. BASTA: Good afternoon, Your Honor. Paul Basta  
5 from Paul Weiss. My order got a little bit jumbled up by  
6 Mr. Weisfelner's presentation, so let me just cover a few  
7 points. Let me start with the pre-sale settlement. We have  
8 settled --

9 THE COURT: Pre-sale accident --

10 MR. BASTA: Yes.

11 THE COURT: -- settlement.

12 MR. BASTA: Yes, personal injury accident settlement.  
13 We've settled 156. The way that those settlements are  
14 structured is they're done by docket. And so there's a  
15 settlement, and then the lawyer for the plaintiffs goes through  
16 a period of allocating that among its -- their clients.

17 THE COURT: But 156 --

18 MR. BASTA: Cases have been --

19 THE COURT: -- cases.

20 MR. BASTA: Cases have been settled.

21 THE COURT: And those are -- does that correspond to  
22 156 individuals or --

23 MR. BASTA: Yes.

24 THE COURT: Yes.

25 MR. BASTA: Yes, and we're expecting -- those



1 settlements are confidential. And so we're expecting that  
2 process to resolve, and when that -- the follow-on process for  
3 the allocation resolves, then the claims will be resolved. I  
4 understand what the GUC Trust is asking, which is they asked us  
5 for the information so they know what's out of their  
6 settlement, and we're sympathetic to that. But I just -- I'm  
7 not counsel on those mediations and I need to figure the  
8 confidentiality rules to be able to deal with the GUC Trust  
9 request, but we'll pay attention to that.

10 THE COURT: Okay.

11 MR. BASTA: Your Honor, we have -- Mr. Weisfelner was  
12 kind enough to hold a meet and confer where he largely went  
13 through with us and gave us advanced notice of what he has  
14 presented to the Court, and we took it all in. I don't think  
15 it will be surprising to the Court to know that we have a  
16 disagreement about the -- their path forward and whether it  
17 really works. But what we suggested is that they give us their  
18 settlement agreement when it's ready and their proposed path,  
19 and that we would have another meet and confer and suggest the  
20 right path forward to get this resolved.

21 There are two things, maybe three things I'd like to  
22 point out as to what's likely to come back before the Court  
23 when the issues get joined. One is I don't -- under Ortiz,  
24 which post-dated the Manville decision and Your Honor's ruling,  
25 you know, we really don't believe that a limited class applies



1 in this circumstance, and we will be putting in briefing  
2 explaining why that's the case.

3 We also don't know the extent to which the settlement  
4 agreement -- it hasn't been described to us how -- in Manville  
5 they had to deal with the plan modification issues. It's  
6 unclear to us how that is going to be addressed, and we'd like  
7 to review that and reserve on that, as well.

8 I think there's going to be a debate as to what has  
9 to happen at that notice hearing. And the last time that we  
10 did this, what got approved at the notice hearing was the  
11 sending of the notice, and then we determined there was a --  
12 Your Honor determined there was a predicate issue as to whether  
13 Rule 23 applied.

14 Here at that notice hearing, you know, under Ortiz,  
15 there are very specific requirements of factual findings that  
16 have to happen at that first hearing, including findings  
17 regarding the amounts of the claims and the -- that they're  
18 liquidated, and the amount of the limited funds which could  
19 impact the JPMorgan litigation. There are going to be issues  
20 regarding the adequacy of class representatives and all the  
21 23(a) issues that are being decided by Judge Furman present are  
22 also going to be -- need to be findings of that done at that  
23 notice hearing.

24 What I heard Mr. Weisfelner say is he wants to get  
25 the preliminary approvals and then kind of backfill into it as



1 the rulings come down from the District Court, but I think  
2 there's going to be a debate about that, whether that would  
3 work.

4 Mr. Weisfelner was also correct that we were  
5 non-committal on whether to seek a stay or withdrawal of the  
6 reference or to do nothing, and we weren't trying to be coy  
7 about it. The issue -- and Your Honor alluded to it -- is  
8 there's overlap. The last time around, there were real  
9 bankruptcy issues that had to be resolved here that were  
10 dissectable away from the class certification issues that are  
11 going on before Judge Furman.

12 Here, it's harder to navigate, and we have a  
13 consistent view that we don't think there should be  
14 inconsistent rulings.

15 THE COURT: Explain a little further what you see as  
16 those issues.

17 MR. BASTA: Well, for example, at the notice hearing,  
18 you're going to have to -- the Court would have to consider  
19 factual findings regarding the amount of the claims and that  
20 they're liquidated. There's briefing occurring for Judge  
21 Furman regarding experts and Boettcher --

22 THE COURT: Why do I have to decide at that stage  
23 that that could be liquidated? I mean, that sounds wrong to  
24 me. But go ahead and explain.

25 MR. BASTA: Your Honor, it is a -- we've done the



1 research. We haven't found a case since Ortiz that has found a  
2 limited fund to apply where the claims are unliquidated.  
3 That's the big change of Ortiz, one of the big changes or  
4 Ortiz. And so we believe that -- and we think the case is very  
5 clear that it only applies to liquidated claims, and there has  
6 to be findings that the amount of the claims are greater than  
7 the limited fund, which all requires -- in Ortiz, it was an  
8 eight-day evidentiary trial on, you know, on those factual  
9 issues. And we think that that overlaps with things that are  
10 coming down from Judge Furman.

11 We also think that before Judge Furman are the  
12 typicality, commonality, and adequate representation issues,  
13 and we disagree with the GUC Trust. All of these, the  
14 viability of all of these claims, are state by state, based  
15 upon state law. That's what's being worked through in the  
16 district court, and that's because differences in state law  
17 drive differences in the plaintiffs' rights. And I think what  
18 Mr. Weisfelner described is a process where Your Honor approves  
19 the fairness of the settlement preliminarily and approves a  
20 nationwide class, but then fills in the subclasses based upon  
21 what comes down from Judge Furman. And what we believe Ortiz  
22 is going to require is that that be done at the settlement --  
23 at the initial notice hearing.

24 THE COURT: As part of a settlement, can the  
25 plaintiffs and the GUC Trust agree that -- as to the law that

1 will govern claims for settlement purposes rather than -- in  
2 other words, could they agree or propose to agree as part of  
3 the settlement that the following legal principles will --  
4 substantive legal principles will apply to claims of each class  
5 member, whatever states they're located in? I understand if  
6 the case were litigated to judgment --

7 MR. BASTA: Right.

8 THE COURT: -- the law of each state would apply.  
9 But in the settlement, is that true?

10 MR. BASTA: Your Honor, I'm a little bit out of my  
11 league on this. I have to refer -- defer to my co-counsel, but  
12 my understanding is that AmChem, which we went through over the  
13 last hearing, says that the class certification rules in the  
14 settlement context are equally stringent --

15 THE COURT: Oh, I knew that.

16 MR. BASTA: -- if not more stringent.

17 THE COURT: No question about that. But I didn't  
18 think that the stringency of -- for class certification  
19 dictated the substantive rules that would -- if you litigated a  
20 case would have to be -- every issue would have to -- you know,  
21 might have to be decided. But for settlement purposes, the  
22 parties can agree that the following rule will apply to all  
23 class members, whatever states they're located in. People  
24 could come in and object to that settlement, but -- am I wrong  
25 in that?



1 MR. BASTA: Your Honor, honestly, I'd like to see  
2 what they propose, and I really don't want to misstep as to  
3 whether that would work or not work. It's my understanding  
4 that they need to have that set up up front, but what I'd like  
5 to do is to see what they do and then brief it. I don't know  
6 for sure whether that work-around would work, but it's my  
7 understanding is that it does --

8 THE COURT: I wouldn't necessarily --

9 MR. BASTA: -- have to be done up front.

10 THE COURT: -- a work-around. That's -- settlements  
11 can do that. I mean, I've had -- in bankruptcy cases,  
12 Mr. Basta, where there are choice of law issues, it's quite  
13 common for lawyers to agree that the law of X state will be  
14 applied no matter -- even though there are arguments that six  
15 different states should apply, the parties agree that the law  
16 of New York will apply to all claims. And I've had trials with  
17 that and that's not an uncommon stipulation. I -- it's always  
18 dangerous to think back more than the 12 years I've been  
19 sitting here, but I seem to recall being involved as a  
20 litigator in settlements where, for settlement purposes, the  
21 parties agreed as to the legal principles that would control  
22 for determining damages, for -- you know, or in fixing amounts  
23 of claims, et cetera. That's a long time ago. I haven't gone  
24 back to the books myself to see if I could find that.

25 MR. BASTA: Not sure I'm answering the question, but





1 we're going to brief it. It's my understanding, under Ortiz,  
2 that in the preliminary approval of the fairness of the  
3 settlement, what you're doing is you're assessing what the  
4 ultimate class members are actually going to receive  
5 quantitatively. And so --

6 THE COURT: So could they agree in what's presented  
7 to me as the proposed settlement that the following six rules  
8 will apply for -- you know, it may be that they conclude that  
9 maybe there's ten causes of action that have been asserted,  
10 five of them would create real difficulty if you had to  
11 litigate them, five are pretty clear cut. And so for  
12 settlement purposes, all -- we settle on the basis of the five  
13 and the claims under the other five will be barred if the  
14 settlement's approved.

15 MR. BASTA: Your Honor, we will brief it. I think  
16 that there's going to be complexity as to how the subclasses  
17 are defined and how what entitlements -- like, who's actually  
18 in the subclasses and what they're going to receive. But  
19 really, I think at this point, without having seen --

20 THE COURT: You're assuming that there have to be  
21 subclasses. Mr. Weisfelner had suggested that until you get to  
22 an estimation stage as to if different law applies in different  
23 states, it -- we'll get there at some point.

24 MR. BASTA: Yeah, okay.

25 THE COURT: All right.



1 MR. BASTA: I don't want to confuse things, Your  
2 Honor, by not being crisp in my responses to you. I'm just  
3 giving you what my understanding is of what the rules are that  
4 apply.

5 And so the withdrawal of the reference in the stay is  
6 really just because we want to see and assess, once we read  
7 what they have done, where we think overlap is and really try  
8 to prevent that overlap.

9 THE COURT: From what Mr. Weisfelner suggested, the  
10 notion of the stay seems almost moot because he's suggesting  
11 that the class certification doesn't go forward here until  
12 Judge Furman has decided the summary judgment motions.

13 MR. BASTA: The thing I -- and I could speak to that  
14 separately, that I didn't really understand is that at the  
15 notice stage in this court, the Court would be certifying  
16 classes; yet, the details of then those classes would await  
17 Judge Furman. It just seems to me that that's -- either there  
18 are state classes or there's a nationwide class. How those two  
19 things interact, I have not figured out.

20 THE COURT: Well, that might -- and I'm going to have  
21 Mr. Weisfelner come back up after you've finished talking  
22 because I didn't ask him this question. I didn't go back today  
23 to read -- I've got a stack of Judge Furman's decisions. Are  
24 there causes of action that Judge Furman has recognized as  
25 existing in each of the states in which he has rendered a



1 decision? And so I guess what I'm asking, in effect, is  
2 whether -- can a settlement be proposed with a nationwide class  
3 that will settle one, two, or three causes of action, and  
4 provided that pursuant to the settlement, other claims, causes  
5 of action will be dismissed?

6 MR. BASTA: Could you give me one moment --

7 THE COURT: Yeah.

8 MR. BASTA: -- to confer with my co-counsel, Your  
9 Honor?

10 THE COURT: Yes, absolutely.

11 (Counsel confer)

12 MR. BASTA: Mr. Weisfelner might have a different  
13 view, but my understanding that what's pending before Judge  
14 Furman is class certification issues, summary judgment issues,  
15 and Daubert issues, and that the determination of those issues  
16 preclude nationwide class on any of the causes of action.

17 THE COURT: The Daubert issues, I'm not -- I -- you  
18 know, once upon a time, I think I saw one of the briefs before  
19 Judge Furman on it, but I really haven't gone back to look.  
20 But if we get to the estimation stage, the rules, as I  
21 understand it, as to what the Court may consider in an  
22 estimation proceeding are not the same as the Daubert trial  
23 issues. And so the parties and the Court ultimately have much  
24 broader discretion in terms of what evidence is presented and  
25 what evidence will be considered. The rules of -- the strict



1 rules of evidence, as I understand them, do not apply in an  
2 estimation proceeding.

3 MR. BASTA: Yes, Your Honor, I think we're going to  
4 unfortunately get into a chicken and an egg problem again  
5 because in order to estimate, we need claims to estimate. In  
6 order to need claims to estimate, we need class certification.  
7 And so the question is going to come back to, I believe, Your  
8 Honor, is to whether Your Honor's going to be comfortable  
9 certifying a class based on Ortiz on that basis, understanding  
10 that those issues are going to follow on from Judge Furman.

11 THE COURT: Okay. All right.

12 MR. BASTA: And then the last point I wanted to make,  
13 Your Honor, just has to do with timing, which is that  
14 Mr. Weisfelner proposed filing the settlement motion I think at  
15 the end of January.

16 THE COURT: Yes.

17 MR. BASTA: And then said that there would be a  
18 hearing in February. And our view is there's a lot of wood to  
19 chop at this first hearing and that that's tight. But when the  
20 -- there's evidence that's going to be required at that first  
21 hearing, and so we will sit down when it's filed with a meet  
22 and confer and come up with a schedule that we think makes  
23 sense.

24 THE COURT: Okay. Does anybody else which to be  
25 heard before Mr. Weisfelner gets back up? Okay.



1 Mr. Weisfelner, let me ask you the questions that I  
2 asked Mr. Basta, not really -- with respect to a settlement,  
3 can -- is there authority as part of the settlement to agree  
4 that certain claims will be settled, and others ultimately will  
5 be dismissed if -- assuming the settlement is approved?

6 MR. WEISFELNER: With all due respect, the question's  
7 irrelevant, and let me tell you why.

8 THE COURT: Okay.

9 MR. WEISFELNER: There was a path down which we could  
10 have gone where we viewed all of the merits-based issues either  
11 resolved by Judge Furman, pending before Judge Furman, or,  
12 frankly, on appeal from Judge Furman. And what we could have  
13 done was in a settlement agreement settle all that stuff as  
14 between us and the GUC Trust; say, you know, we heard what  
15 Judge Furman said and it's up on appeal, so we're going to  
16 presume the plaintiffs win; we heard what Judge Furman is  
17 planning on ruling, let's obviate it, we'll just give you the  
18 benefit of a positive ruling. Let me tell why I don't think  
19 that's the direction that we ought to be going, and that's not  
20 the direction we plan on going.

21 THE COURT: Okay.

22 MR. WEISFELNER: And a lot of it has to do with  
23 Ortiz, which I think is a critical case. But what Mr. Basta  
24 failed to mention is that Ortiz was determined before the  
25 amendments to Rule 23. And let me tell you how I think those



1 two things coincide because they talk a lot about needing to  
2 determine liability by dollar amount before you can get to  
3 class certification, all of which is nonsense.

4           The way we read Ortiz and the amendments to Rule 23,  
5 what you're being asked to do at the very first substantive  
6 hearing is to determine whether or not certification of the  
7 class is likely to happen after notice, and whether the  
8 settlement agreement is likely to be approved after notice and  
9 the hearing.

10           What Ortiz teaches us, I believe, before or after the  
11 amendment, is a court of competent needs to make a  
12 determination that what the class is being offered is as good  
13 or better than what the class could have realized had their  
14 litigated their brains out. That's the economic analysis that  
15 needs to be done, and let me tell you how we view it. It's  
16 really pretty simple.

17           The most that this class is ever able to accomplish  
18 is round numbers, \$1 billion. That's if you trigger the entire  
19 accordion, which requires round numbers again, a determination  
20 and an estimation proceeding of \$10 billion worth of damages.  
21 And I wish I had these numbers better memorized. I don't, so  
22 I'm guaranteed to make a mistake. But Mr. Steele --

23           THE COURT: And that's why you --

24           MR. WEISFELNER: Mr. Steele --

25           THE COURT: That's also why you think the limited



1 fund concept works because --

2 MR. WEISFELNER: Of course. And this is the only  
3 liability calculation Your Honor has to go through. First  
4 issue, if we didn't all collectively, every class member, have  
5 an interest in triggering the accordion, that's the  
6 commonality. We all want to trigger the accordion, and we want  
7 to trigger it to the maximum extent possible. So it's the shot  
8 at a billion dollars versus -- what is it versus? It versus us  
9 saying to heck with triggering the accordion feature, we're  
10 going to go after the remaining value in the GUC Trust and  
11 we're going to seek to claw back every dime that the GUC Trust  
12 ever distributed to any GUC beneficiary on the theory that we  
13 were as good as the -- I don't remember the numbers, \$8 billion  
14 worth of allowed claims in the General Motors case other than  
15 ours.

16 That -- those \$8 billion worth of claims got an  
17 original GUC Trust that was at one point valued at -- how much  
18 money went into the GUC Trust at the sale? Do you know? Do  
19 you remember? At any event, when you do that --

20 THE COURT: Your people are letting you down,  
21 Mr. Weisfelner.

22 MR. WEISFELNER: Well, they are because we've gone  
23 through this math a million times. If one were to take a look  
24 at all of the money that the GUC Trust ever had and figured out  
25 what the distribution was, it was about 20 cents on the dollar,



1 you then add the amount of plaintiff claims on top of that.  
2 And for purposes of this exercise, figure it's 10 billion. And  
3 then figure there's another billion dollars' worth of value  
4 that comes into the trust.

5           So you claw back everything, you have the billion,  
6 you now have a much bigger plaintiff unsecured creditor class,  
7 and do the math. And compare that to \$10 billion worth of  
8 claims getting the billion dollar according feature  
9 exclusively, not having to share it with the other general  
10 unsecured creditors. And Your Honor will the numbers are such  
11 that we satisfy Ortiz's test, that we did as well as we could  
12 ever do through a litigation or better. That's the economic,  
13 quote, "liability" test, not that you had to sit there and  
14 determine what the entire class' claims are worth with  
15 application to every ruling that Judge Furman did or could have  
16 made, and then make an economic determination as to what that  
17 claim is worth. That's not the exercise.

18           That's why we don't have to, in my judgment, pull a  
19 fast one and try and settle claims as part of a settlement.  
20 That would be -- someone's going to kill me for having said  
21 this -- unfair to GM. Like I care. But it's not that it would  
22 be unfair to GM, it's that Mr. Basta, as part of --

23           THE COURT: Don't you feel better, Mr. Basta?

24           MR. BASTA: My work is done here, Your Honor.

25           MR. WEISFELNER: It's that Mr. Basta and





1 Mr. Steinberg, on behalf of the their client, continuing their  
2 scorched-earth litigation policy, would call us to task and say  
3 the determination of liability, okay, in connection with and in  
4 full anticipation and credence to Judge Furman's decisions get  
5 made at the estimation hearing. You can't settle them.

6 THE COURT: All I can say is, life -- if you ever get  
7 to the -- if you get to the point of an estimation proceeding,  
8 life would be much easier if there was a settlement on the  
9 legal principles that were going to be applied and not have to  
10 do it on 50 states and to just --

11 MR. WEISFELNER: Yeah. And, Your Honor, I do think  
12 that --

13 THE COURT: I'm not suggesting that -- I'm just --  
14 that's an observation, that's all.

15 MR. WEISFELNER: Well, it's interesting because  
16 that's what Judge Furman asked, as I understand it. And I'm no  
17 expert on the MDL, but I what I understand is Judge Furman had,  
18 for lack of a better term, bellwether determinations on, for  
19 example, manifestation. I think it involved three, four, maybe  
20 five jurisdictions. And then the court said, please sit down  
21 GM and co-leads, and tell me the extent to which this ruling  
22 applies to every other state. And the parties were unable, as  
23 far as I can recall, to agree on a single state where the rule  
24 either applied or it didn't apply, except plaintiffs  
25 acknowledge that there were a handful of states where the



1 ruling would apply as against their economic interest.

2 All I'm saying is we will try. We will try hard. I  
3 don't think it's impossible on a lot of these rulings, but I  
4 think the hard work to gear up for the estimation hearing,  
5 which, again, is an estimation under the Bankruptcy Code --  
6 because we started this whole dialogue with Mr. Basta trying to  
7 explain to you why prior determinations by Judge Furman on  
8 withdrawal of the reference are going to be different now  
9 because we've stripped away all the bankruptcy-related issues  
10 and all we're left with is class certification stuff. He's  
11 wrong. The meat of this case is going to be a claims  
12 estimation under 502 of the Bankruptcy Code. And with all due  
13 respect to Judge Furman, you're the man whether you like it or  
14 not.

15 THE COURT: Unless he withdraws the reference.

16 MR. WEISFELNER: And -- well, but my point is he  
17 ought not because you are the man.

18 THE COURT: Let me ask this question, Ms. Weisfelner.

19 MR. WEISFELNER: Yes, sir.

20 THE COURT: The last paragraph of Mr. Basta's letter  
21 says, quote:

22 "Finally, in late October 2018, New GM conducted two  
23 mediation sessions with counsel for certain economic  
24 lost lead claimants with Judge Layn Phillips as the  
25 mediator, but the mediation did not result in a



1 settlement agreement."

2 Are there going to be any -- are any future mediation  
3 sessions with Judge Phillips or anyone else contemplated at  
4 this point?

5 MR. WEISFELNER: Not currently, Your Honor. That's,  
6 again, not to say that hope doesn't spring eternal --

7 THE COURT: That's why I only asked whether it was  
8 contemplated.

9 MR. WEISFELNER: But listen, after all the lay-offs  
10 this poor company has been required to go through because of  
11 the poor economic circumstances there they're forced to face, I  
12 don't know that we ever get back on track again. But again,  
13 we're optimistic.

14 THE COURT: Sometimes there's an advantage to putting  
15 all this bad stuff behind you.

16 MR. WEISFELNER: One would think.

17 THE COURT: Okay. Mr. Basta, do you have anything to  
18 add on the mediation front just to this economic loss? I  
19 appreciate -- I take it as to the personal injury wrongful  
20 death, there are still efforts to see whether you can resolve  
21 additional cases, and maybe Mr. Steinberg or someone else is  
22 dealing with that.

23 MR. BASTA: Your Honor, Kirkland is the one dealing  
24 with that.

25 THE COURT: Okay.



1 MR. BASTA: The -- on the personal injury wrongful  
2 death, there are additional sessions scheduled through the  
3 first quarter of 2019, and we are committed to keeping at it.  
4 As to the global, the economic loss mediation, we're not  
5 involved in that. I understand the same thing as  
6 Mr. Weisfelner, which is that there's nothing currently  
7 scheduled. But I agree that hope springs eternal.

8 THE COURT: Okay.

9 MR. BASTA: And as to Mr. Weisfelner's last point,  
10 I'm not going to respond, I'm just going to wait to see that  
11 their -- their motion and we'll file our response.

12 THE COURT: Okay. I would request that someone order  
13 the transcript. I plan to send a copy of the transcript to  
14 Judge Furman. Okay?

15 MR. BASTA: Yes. Thank you, Your Honor.

16 THE COURT: All right. Thank you very much for  
17 coming. Everybody have a nice holiday, and Happy New Year.

18 MR. BASTA: You, too, Your Honor. And thank you.

19 (Proceedings concluded at 3:08 p.m.)

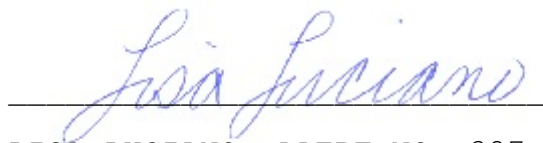
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C E R T I F I C A T I O N

I, Lisa Luciano, court-approved transcriber, hereby  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter, and to the best of my ability.



LISA LUCIANO, AAERT NO. 327

DATE: December 21, 2018

ACCESS TRANSCRIPTS, LLC

